

**STATE OF TENNESSEE  
Department of Commerce and Insurance  
500 James Robertson Parkway  
Nashville, TN 37243-1131  
PH - 615.532.5260, FX - 615.532.2788  
Jerald.E.Gilbert@tn.gov**

December 18, 2018

Cincinnati Insurance Company, The  
P O Box 145496  
Cincinnati, OH 45250  
NAIC # 10677

Certified Mail  
Return Receipt Requested  
7017 1450 0002 1332 6635  
Cashier # 42144

Re: Loss Recovery Specialists, Llc V. Cincinnati Insurance Company, The  
  
Docket # 18C1328

To Whom It May Concern:

Pursuant to Tennessee Code Annotated § 56-2-504 or § 56-2-506, the Department of Commerce and Insurance was served December 7, 2018, on your behalf in connection with the above-styled proceeding. Documentation relating to the subject is herein enclosed.

Jerald E. Gilbert  
Designated Agent  
Service of Process

Enclosures

cc: Circuit Court Clerk  
Hamilton County  
625 Georgia Avenue, Rm 500  
Chattanooga, Tn 37402

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B. PHILPOT

IN THE CIRCUIT COURT OF HAMILTON COUNTY, TENNESSEE

LOSS RECOVERY SPECIALISTS, LLC,

Plaintiff,

vs.

CINCINNATI INSURANCE COMPANY,

Defendant.

Docket No. 19C1328

Division \_\_\_\_\_

FILED IN OFFICE  
2018 NOV 30 PM 2:29  
LARRY L. HENRY, CLERK  
BY: CS

**SUMMONS**

TO DEFENDANT: Cincinnati Insurance Company

SERVE AT: Serve through COMMISSIONER OF INSURANCE

You are summoned and required to Answer and make defense to a Complaint herewith served upon you. Your Answer to the Complaint must be filed and served upon plaintiff's attorney on or before thirty (30) days after service of this Summons and Complaint upon you, exclusive of the day of service. Your Answer must be filed in the OFFICE OF THE CIRCUIT COURT CLERK, 625 Georgia Avenue, Room 500, Chattanooga, Tennessee 37402. You are also required to serve a copy of your Answer upon the plaintiff's attorney, or the *pro se* plaintiff as set out below. If you fail to do so, judgment by default will be taken against you for the relief demanded in the Complaint.

ISSUED & TESTED this 30 day of November, 2018.

LARRY L. HENRY, CLERK

By: C. Smith Jr

DEPUTY CLERK

Robert W. Sauser 006217  
Plaintiff's Attorney BPR#

300 Forest Ave., Suite C

Chattanooga, TN 37405  
Address

423.535.9387 423.468.2599  
Tel. No. Fax No.

**NOTICE TO DEFENDANT(S)**

Tennessee Code Annotated § 26-2-103 provides a \$10,000.00 personal property exemption from execution or seizure to satisfy a judgment. If a judgment should be entered against you in this action and you wish to claim property as exempt, you must file a written list, under oath, of the items you wish to claim as exempt with the Circuit Court Clerk. The list may be filed at any time and may be changed by you thereafter as necessary; however unless it is filed before the judgment becomes final, it will not be effective as to any execution or garnishment issued prior to the filing of the list. Certain items are automatically exempt by law and do not need to be listed; these include items of necessary wearing apparel (clothing) for yourself and your family and trunks or other receptacles necessary to contain such apparel, family portraits, the family Bible, and school books. Should any of these items be seized you, would have the right to recover them. If you do not understand your exemption right or how to exercise it, you may wish to seek the counsel of a lawyer.

IN THE CIRCUIT COURT OF HAMILTON COUNTY, TENNESSEE

LOSS RECOVERY SPECIALISTS, LLC, )

Plaintiff, )

vs. )

CINCINNATI INSURANCE COMPANY, )

Defendant. )

Docket No. 18C1328

Division \_\_\_\_\_

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**COMPLAINT FOR DECLARATORY & INJUNCTIVE RELIEF,**  
**OR IN THE ALTERNATIVE, FOR DAMAGES**

The Plaintiff, Loss Recovery Specialists, LLC, by and through undersigned counsel, would show this Honorable Court as follows with respect to its Complaint in this matter:

1. Loss Recovery Specialists, LLC, is a limited liability company formed under the laws of the state of Colorado, and doing business in Hamilton County, Tennessee.
2. The Defendant, Cincinnati Insurance Company, is an Ohio corporation licensed to do business in Tennessee, and actively doing business in Hamilton County, Tennessee. The Defendant may be served through the Tennessee Commissioner of Insurance, 500 James Robertson Parkway, Nashville, Tennessee, 37243-1131.
3. At all times material to this action, there existed between PAK Brothers (a partnership) and the Defendant a policy of property and casualty insurance under policy number EPP0258538 (the "Policy"), by which the Defendant insured PAK Brothers against certain losses to the Property. The Policy (material provisions) is attached to this Complaint as Exhibit A.
4. On or about 29 April 2017 a storm (the "April storm") occurred in and around the location of the Property, as a result of which the Property sustained damage.

5. PAK Brothers made a claim against the Policy for the damage done as a result of the April storm, to which the Defendant assigned Claim Number 2904508.

6. By assignment executed on 16 January 2018 PAK Brothers assigned to the Plaintiff all of its right, title and interest in and to the claim bearing Claim Number 2904508 for the express purpose of prosecuting the within action. A copy of said assignment is attached hereto as Exhibit B.

7. On or about 22 September 2017 Plaintiff submitted its estimate to repair the damage sustained by PAK Brothers in the April storm, in the amount of \$418,520.20.

8. The Defendant estimated the loss to be \$29,743.42, and thereafter paid only that amount, which was far less than the amount of the loss.

9. The Plaintiff demanded that the Defendant engage in the appraisal process set forth in the Policy.

10. By letter to the Tennessee Insurance Commissioner dated 20 December 2017, the Defendant claimed that it had denied the demand for appraisal, but any such denial was not communicated to PAK Brothers or to the Plaintiff at that time.

11. By letter dated 01 March 2018 directly to the Plaintiff, the Defendant rejected Plaintiff's demand for appraisal.

12. Section D.2. of the Policy provides, in material part: "If we and you disagree on the value of the property, the amount to of Net Income and operating expense, or the amount of the 'loss', either may make written demand for an appraisal of the 'loss'." The Policy goes on to describe the appraisal process. [See Exhibit A.]

13. In spite of the Plaintiff's demand for appraisal, and the provisions of its own Policy that provide for same, the Defendant has refused to participate in the appraisal process.

**Cause of Action for Declaratory and Injunctive Relief**

14. Defendant's refusal to engage in the appraisal process required by the Policy in connection with the Plaintiff's loss is a breach of contract that has caused, and continues to cause, the Plaintiff damage and harm.

15. Defendant's refusal to engage in the appraisal process required by the Policy in connection with Plaintiff's loss constitutes bad faith by Defendant, entitling the Plaintiff to the statutory penalties and attorney fees set forth at TCA § 56-7-105.

16. Plaintiff respectfully requests that the Court interpret the Policy, declare that the Defendant has a contractual obligation to participate in the appraisal process required by the Policy, and issue a mandatory injunction requiring the Defendant to so participate.

17. **This is the first application for extraordinary relief in this matter.**

**Cause of Action for Breach of Contract**

18. Defendant's refusal to pay the loss sustained by Plaintiff constitutes a breach of contract, for which Plaintiff is entitled to damages.

19. Defendant's refusal to pay the loss sustained by Plaintiff constitutes bad faith, and entitles Plaintiff to the statutory penalties and attorney fees set forth at TCA § 56-7-105.

20. Plaintiff requests that the Court determine what property damage was sustained by the Plaintiff in the April storm, and enter a judgment in favor of Plaintiff and against the Defendant for all such damages and losses.

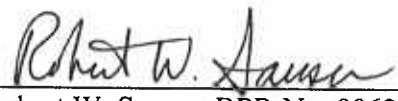
**WHEREFORE PLAINTIFF PRAYS that:**

- a. Proper process issue and be served upon the Defendant requiring the Defendant to appear and answer within the time allowed by law;

- b. Upon the final hearing in this cause, the Court declare the rights and liabilities of the parties under the Policy, find that the Defendant must participate in the appraisal process required by the Policy, and order the Defendant to so participate;
- c. Upon the final hearing in this cause, the Court find that the Defendant's refusal to participate in the appraisal process constituted a bad faith breach of contract and award the Plaintiff the statutory penalty, including attorney fees, set forth in TCA § 56-7-105;
- d. Alternatively, upon the final hearing in this cause, the Court find the Defendant to have breached its contract with Plaintiff by failing to pay Plaintiff's entire loss, determine the value of Plaintiff's loss caused by the April storm, find that said loss is covered by the Policy, and enter a judgment in the amount of the damage sustained by the Plaintiff (less any sum already paid by Defendant).
- e. The Plaintiff be awarded its reasonable attorney fees and costs;
- f. All costs of the court clerk and all discretionary costs be taxed to the Defendant;
- g. The Court award Plaintiff such other, further and general relief to which the Court deems it fairly and equitably entitled.

Respectfully submitted,

**LAW OFFICES OF  
ROBERT W. SAUSER**

By:   
Robert W. Sauser, BPR No. 006217

300 Forest Avenue, Suite C  
Chattanooga, TN 37405-3977  
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423.468.2599 (f)  
rsauser@sauserlawfirm.com  
*Attorney for Loss Recovery Specialists, LLC*



## The Cincinnati Insurance Company

A Stock Insurance Company

Headquarters: 6200 S. Gilmore Road, Fairfield, OH 45014-5141

Mailing address: P.O. Box 145496, Cincinnati, OH 45250-5496

www.cinfin.com ■ 513-870-2000

### COMMON POLICY DECLARATIONS

Billing Method: DIRECT BILL

POLICY NUMBER EPP 025 85 38

**NAMED INSURED** PAK BROTHERS  
504 MAY ST  
**ADDRESS** CHATTANOOGA, TN 37405-3833  
(Number & Street,  
Town, County,  
State & Zip Code)

**Previous Policy Number:**  
EPP0258538

**Policy Period:** At 12:01 A.M., STANDARD TIME AT YOUR MAILING ADDRESS SHOWN ABOVE

**All coverages except Automobile and / or Garage**

Policy number: EPP 025 85 38 FROM: 05-20-2015 TO: 05-20-2018

**Automobile and / or Garage**

Policy number: FROM: TO:

Agency AMERICAN INSURANCE MANAGERS, LLC 41-137

City CLEVELAND, TN

**Legal Entity / Business Description**

PARTNERSHIP

IN RETURN FOR THE PAYMENT OF THE PREMIUM, AND SUBJECT TO ALL THE TERMS OF THIS POLICY, WE AGREE WITH YOU TO PROVIDE THE INSURANCE AS STATED IN THIS POLICY.

**FORMS APPLICABLE TO ALL COVERAGE PARTS:**

IL0017	11/98	COMMON POLICY CONDITIONS
IA102A	09/08	SUMMARY OF PREMIUMS CHARGED
IA904	04/04	SCHEDULE OF LOCATIONS
IA4236	01/15	POLICYHOLDER NOTICE TERRORISM INSURANCE COVERAGE
IP404TN	06/94	IMPORTANT INFORMATION TO POLICYHOLDERS TENNESSEE
IP446	08/01	NOTICE TO POLICYHOLDERS
IA4109TN	10/09	TENNESSEE CHANGES - CANCELLATION AND NONRENEWAL
IA4238	01/15	CAP ON LOSSES FROM CERTIFIED ACTS OF TERRORISM
IA4338	05/11	SIGNATURE ENDORSEMENT
IA4442	05/14	NOTICE TO POLICYHOLDERS - EXCLUSION - ACCESS OR DISCLOSURE OF CONFIDENTIAL OR PERSONAL INFORMATION AND DATA-RELATED LIABILITY
FM502	07/08	COMMERCIAL PROPERTY COVERAGE PART DECLARATIONS
GA532	07/08	COMMERCIAL GENERAL LIABILITY COVERAGE PART DECLARATIONS

05-22-2015 09:13

Countersigned

(Date)

By

(Authorized Representative)

IA 509 01 12

# Exhibit A

EPP 025 85 38

Page 1 of 1

# THE CINCINNATI INSURANCE COMPANY

A Stock Insurance Company

## COMMERCIAL PROPERTY COVERAGE PART DECLARATIONS

Attached to and forming part of POLICY NUMBER: EPP 025 85 38

Named Insured is the same as it appears on the Common Policy Declarations unless otherwise stated here.

Loc. (address)  
REFER TO IA904

COVERAGE PROVIDED					OPTIONAL COVERAGES Applicable only when an entry is made						
Item	Coverage	Limits	Coin- surance	Covered Cause Of Loss	Inflation Guard (%)	Replace- ment Cost (x)	Replace- ment Cost Ind. Stock (x)	Agreed Value (x)	Monthly Limit (fraction)	Maximum Period (X)	Extended Period (Days)
1-1	BUILDING	2,000,000	80%	SPECIAL		X					
1-1	BUSINESS INCOME W/EXTRA EXPENSE (c)	66,000	80%	SPECIAL							
1-2	BUILDING	1,100,000	80%	SPECIAL		X					
1-2	BUSINESS INCOME W/EXTRA EXPENSE (c)	66,000	80%	SPECIAL							

DEDUCTIBLE: \$500.00 unless otherwise stated \$ 10,000

### MORTGAGE HOLDER

Item	Name and Address
1-1	FIRST VOLUNTEER BANK ISAOA PO BOX 11167 CHATTANOOGA, TN 37401-2167
1-2	FIRST VOLUNTEER BANK ISAOA PO BOX 11167 CHATTANOOGA, TN 37401-2167

### FORMS AND / OR ENDORSEMENTS APPLICABLE TO THIS COVERAGE PART:

FM101	04/04	BUILDING AND PERSONAL PROPERTY COVERAGE FORM (INCLUDING SPECIAL CAUSES OF LOSS)
FA4042	11/07	PROPERTY COVERAGE PART AMENDATORY ENDORSEMENT
FA450	11/04	COMMERCIAL PROPERTY CONDITIONS
FA213	04/04	BUSINESS INCOME (AND EXTRA EXPENSE) COVERAGE FORM



# BUILDING AND PERSONAL PROPERTY COVERAGE FORM (INCLUDING SPECIAL CAUSES OF LOSS)

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# BUILDING AND PERSONAL PROPERTY COVERAGE FORM (INCLUDING SPECIAL CAUSES OF LOSS)

Various provisions in this policy restrict coverage. Read the entire policy carefully to determine rights, duties and what is and is not covered.

Throughout this policy the words "you" and "your" refer to the Named Insured shown in the Declarations. The words "we", "us" and "our" refer to the Company providing this insurance.

Other words and phrases that appear in quotation marks have special meaning. Refer to **SECTION G. DEFINITIONS**.

## SECTION A. COVERAGE

We will pay for direct physical "loss" to Covered Property at the "premises" caused by or resulting from any Covered Cause of Loss.

### 1. Covered Property

Covered Property, as used in this Coverage Part, means the following types of property for which a Limit of Insurance is shown in the Declarations:

#### a. Building

Building, means the building or structure described in the Declarations, including:

- (1) Completed additions;
- (2) Fixtures, including outdoor fixtures;
- (3) Permanently installed:
  - (a) Machinery and equipment;
  - (b) Building glass, including any lettering and ornamentation;
  - (c) Signs attached to a building or structure that is Covered Property;
  - (d) Awnings and canopies;
- (4) Personal property owned by you that is used to maintain or service a covered building or its "premises", including:
  - (a) Fire extinguishing equipment;
  - (b) Outdoor furniture;
  - (c) Floor coverings; and
  - (d) Appliances used for refrigerating, ventilating, cooking, dishwashing or laundering;
- (5) If not covered by other insurance:

- (a) Additions under construction, alterations and repairs to a covered building;

- (b) Materials, equipment, supplies and temporary structures, on or within 1,000 feet of the "premises", used for making additions, alterations or repairs to a covered building.

#### b. Outdoor Signs

Your outdoor signs permanently installed and not attached to a covered building, and located within 1,000 feet of the "premises".

#### c. Outdoor Fences

Your outdoor fences.

#### d. Business Personal Property

Your Business Personal Property located in or on the building described in the Declarations or in the open (or in a vehicle) within 1,000 feet of the "premises". Your Business Personal Property consists of the following unless otherwise specified in the Declarations or on the **BUSINESS PERSONAL PROPERTY - SEPARATION OF COVERAGE ENDORSEMENT**.

- (1) Furniture;
- (2) Machinery and equipment;
- (3) "Stock";
- (4) All other personal property owned by you and used in your business;
- (5) The cost of labor, materials or services furnished or arranged by you on personal property of others;
- (6) Your use interest as tenant in improvements and betterments. Improvements and betterments are fixtures, alterations, installations or additions:
  - (a) Made a part of the building or structure you occupy but do not own; and
  - (b) You acquired or made at your expense but cannot legally remove;
- (7) Leased personal property used in your business for which you have a contractual responsibility to insure. Such leased property is not considered per-

**p. Vehicles or Self-Propelled Machines**

Vehicles or self-propelled machines (including aircraft or watercraft) that:

- (1) Are licensed for use on public roads; or
- (2) Are operated principally away from the "premises".

This paragraph does not apply to:

- (1) Vehicles or self-propelled machines or autos you manufacture, process or warehouse;
- (2) Vehicles or self-propelled machines, other than autos, you hold for sale;
- (3) Rowboats or canoes out of water and located at the "premises"; or
- (4) Trailers, but only as provided in **SECTION A. COVERAGE, 5. Coverage Extensions, o. Trailers (Non-Owned Detached)**.

**q. Property While Outside of Buildings**

The following property while outside of buildings (except as provided in **SECTION A. COVERAGE, 5. Coverage Extensions**):

- (1) Grain, hay, straw or other crops;
- (2) Signs, except:
  - a) Signs attached to a covered building or structure;
  - b) Signs for which a Limit of Insurance is shown in the Declarations.
- (3) Outdoor fences, except outdoor fences for which a Limit of Insurance is shown in the Declarations;
- (4) Radio antennas, television antennas or satellite dishes; including their lead-in wiring, masts, and towers; and
- (5) Trees, shrubs or plants (other than "stock" of trees, shrubs or plants).

**3. Covered Causes of Loss**

**a. Risks of Direct Physical Loss**

Covered Causes of Loss means RISKS OF DIRECT PHYSICAL LOSS unless the "loss" is:

- (1) Excluded in **SECTION A. COVERAGE, 3. Covered Causes of Loss, b. Exclusions**; or
- (2) Limited in **SECTION A. COVERAGE, 3. Covered Causes of Loss, c. Limitations**;

that follow.

**b. Exclusions**

- (1) We will not pay for "loss" caused directly or indirectly by any of the following, unless otherwise provided. Such "loss" is excluded regardless of any other cause or event that contributes concurrently or in any sequence to the "loss".

**(a) Ordinance or Law**

Except as provided in **SECTION A. COVERAGE, 4. Additional Coverages, g. Ordinance or Law**, the enforcement of any ordinance or law:

- 1) Regulating the construction, use or repair of any building or structure; or
- 2) Requiring the tearing down of any building or structure, including the cost of removing its debris.

This exclusion applies whether "loss" results from:

- 1) An ordinance or law that is enforced even if the building or structure has not been damaged; or
- 2) The increased costs incurred to comply with an ordinance or law in the course of construction, repair, renovation, remodeling or demolition of any building or structure, or removal of its debris, following a physical "loss" to that building or structure.

**(b) Earth Movement**

- 1) Earthquake, including any earth sinking, rising or shifting related to such event;
- 2) Landslide, including any earth sinking, rising or shifting related to such event;
- 3) Mine subsidence, meaning subsidence of a man-made mine, whether or not mining activity has ceased;
- 4) Earth sinking (other than "sinkhole collapse"), rising or shifting including soil conditions which cause settling, cracking or other disarrangement of foundations or other parts of realty. Soil conditions

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- 3) Insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these.

**(g) Water**

- 1) Flood, surface water, waves, tides, tidal waves, overflow of any body of water, or their spray, all whether driven by wind or not;
- 2) Mudslide or mudflow;
- 3) Water or waterborne material which backs up through or overflows or is discharged from a sewer, drain, septic system, sump pump or related equipment; or
- 4) Water or waterborne material under the ground surface pressing on, or flowing or seeping through:
  - a) Foundations, walls, floors or paved surfaces;
  - b) Basements, whether paved or not; or
  - c) Doors, windows or other openings.

However, if water, as described in (g)1) through (g)4) above, results in fire, explosion or sprinkler leakage, we will pay for that portion of "loss" caused by that fire, explosion or sprinkler leakage.

- 5) This exclusion **Water** does not apply to:
  - a) **SECTION A. COVERAGE, 5. Coverage Extensions, a. Accounts Receivable;**
  - b) **SECTION A. COVERAGE, 5. Coverage Extensions, p. Transportation;**
  - c) **SECTION A. COVERAGE, 5. Coverage Extensions, r. Valuable Papers and Records;** or
  - d) Office furniture that is covered Business Personal Property.

**(h) "Fungi", Wet Rot, Dry Rot, and Bacteria**

- 1) Presence, growth, proliferation, spread or any activity of "fungi", wet or dry rot or bacteria. But if "fungi", wet or dry rot or bacteria results in a "specified cause of loss", we will pay for the "loss" caused by that "specified cause of loss".

**2) This exclusion does not apply:**

- a) When "fungi", wet or dry rot or bacteria results from fire or lightning; or
- b) To the extent that coverage is provided in **SECTION A. COVERAGE, 5. Coverage Extensions, g. "Fungi", Wet Rot, Dry Rot and Bacteria - Limited Coverage** with respect to "loss" from a cause of loss other than fire or lightning.

Exclusions b.(1)(a) through b.(1)(h) apply whether or not the "loss" event results in widespread damage or affects a substantial area.

- (2) We will not pay for "loss" caused by or resulting from any of the following:

**(a) Electrical Current**

Artificially generated electrical current, including electric arcing, that disturbs electrical devices, appliances or wires. However, if artificially generated electrical current results in fire, we will pay for that portion of the "loss" caused by that fire.

**(b) Delay or Loss of Use**

Delay, loss of use or loss of market.

**(c) Smoke, Vapor, Gas**

Smoke, vapor or gas from agricultural smudging or industrial operations.

**(d) Miscellaneous Causes of Loss**

- 1) Wear and tear;
- 2) Rust or other corrosion, decay, deterioration, hidden or latent defect or any quality in property that causes it to damage or destroy itself;
- 3) Smog;

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Rain, snow, ice or sleet to personal property in the open.

**(k) Collapse**

Collapse, except as provided in **SECTION A. COVERAGE, 5. Coverage Extensions, c. Collapse**. However, if collapse results in a Covered Cause of Loss at the "premises", we will pay for that portion of "loss" caused by that Covered Cause of Loss.

**(l) Pollutants**

Discharge, dispersal, seepage, migration, release, escape or emission of "pollutants" unless the discharge, dispersal, seepage, migration, release, escape or emission is itself caused by any of the "specified causes of loss". But if the discharge, dispersal, seepage, migration, release, escape or emission of "pollutants" results in a "specified cause of loss", we will pay for the "loss" caused by that "specified cause of loss".

This exclusion does not apply to "loss" to glass caused by chemicals applied to the glass.

**(m) Work Process**

Any processing or work upon Covered Property. But if "loss" by fire results, we will pay for that resulting "loss".

**(n) Neglect**

Neglect of an insured to use all reasonable means to save and preserve property from further damage at and after the time of "loss".

- (3)** We will not pay for "loss" caused by or resulting from any of the following: **(3)(a)** through **(3)(c)**. However, if an excluded cause of loss that is listed in **(3)(a)** through **(3)(c)** results in a Covered Cause of Loss, we will pay for that portion of "loss" caused by that Covered Cause of Loss:

**(a) Weather Conditions**

Weather conditions, but this exclusion only applies if weather conditions contribute in any way with a cause or event excluded in **SECTION A. COVERAGE, 3. Covered Causes of Loss, b. Exclusions,**

**(1)(a)** through **(1)(h)** to produce the "loss".

**(b) Acts or Decisions**

Acts or decisions, including the failure to act or decide, of any person, group, organization or governmental body.

**(c) Defects, Errors, and Omissions**

- 1)** An act, error, or omission (negligent or not) relating to:

- a)** Land use;
- b)** Design, specifications, construction, workmanship;
- c)** Planning, zoning, development, surveying, siting, grading, compaction; or
- d)** Maintenance, installation, renovation, repair, or remodeling

of part or all of any property on or off the "premises";

- 2)** A defect, weakness, inadequacy, fault, or unsoundness in materials used in construction or repair of part or all of any property on or off the "premises"; or

- 3)** The cost to make good any error in design.

**(4) Special Exclusions**

The Special Exclusions apply only to **SECTION A. COVERAGE, 5. Coverage Extensions, b. Business Income and Extra Expense**; and if attached to this policy, the following coverage forms: **BUSINESS INCOME (AND EXTRA EXPENSE) COVERAGE FORM, BUSINESS INCOME (WITHOUT EXTRA EXPENSE) COVERAGE FORM, and EXTRA EXPENSE COVERAGE FORM.**

We will not pay for:

- (a)** Except as provided in **5. Coverage Extensions, q. Utility Services**, any "loss" caused directly or indirectly by the failure of power or other utility service supplied to the "premises", however caused, if the failure occurs outside of a covered building. Failure includes lack of sufficient capacity and reduction in supply. However, if the failure of

- 2) Business Income coverage or Extra Expense coverage.

**(e) Missing Property**

Property that is missing, where the only evidence of the "loss" is a shortage disclosed on taking inventory, or other instances where there is no physical evidence to show what happened to the property.

**(f) Gutters and Downspouts**

Gutters and downspouts caused by or resulting from weight of snow, ice or sleet.

**(g) Transferred Property**

Property that has been transferred to a person or to a place outside the "premises" on the basis of unauthorized instructions.

**(2) Limitations - Various Property for Specified Causes**

We will not pay for "loss" to the following types of property unless caused by the "specified causes of loss" or building glass breakage:

- (a) Animals, and then only if they are killed or their destruction is deemed necessary.
- (b) Contractors equipment, machinery and tools owned by you or entrusted to you, provided such property is Covered Property.

However, this limitation does not apply:

- 1) If the property is located on or within 1,000 feet of the "premises"; or
- 2) To Business Income coverage or to Extra Expense coverage.

**(3) Limitation - Personal Property Theft**

This Limitation does not apply to Business Income coverage or to Extra Expense coverage. The special limit shown for each category, (3)(a) through (3)(d), is the most we will pay for "loss" to all property in that category. The special limit applies to any one occurrence of theft, regardless of the types or number of articles that are lost or damaged in that occurrence. The special limits are:

- (a) \$2,500 for furs, fur garments and garments trimmed with fur.

- (b) \$2,500 for jewelry, watches, watch movements, jewels, pearls, precious and semi-precious stones, bullion, gold, silver, platinum and other precious alloys or metals. This limit does not apply to jewelry and watches worth \$100 or less per item.

- (c) \$2,500 for patterns, dies, molds and forms.

- (d) \$250 for stamps, tickets, including lottery tickets held for sale, and letters of credit.

These special limits are part of, not in addition to, the Limit of Insurance applicable to the Covered Property.

**4. Additional Coverages**

Unless stated otherwise, **SECTION C. DEDUCTIBLE** does not apply to the Additional Coverages. The Additional Coverages Limits of Insurance apply on a per location basis unless stated otherwise.

**a. Change in Temperature or Humidity**

We will pay for "loss" to your covered Business Personal Property caused by a change in temperature or humidity or contamination by refrigerant resulting from damage by a Covered Cause of Loss to equipment used for refrigerating, cooling, humidifying, dehumidifying, air conditioning, heating, generating or converting power (including their connections and supply or transmission lines and pipes) when located on the "premises".

This Coverage is included within the Limits of Insurance shown in the Declarations.

**b. Debris Removal**

- (1) Subject to Paragraphs (3) and (4) of this Additional Coverage, we will pay your expense to remove debris of Covered Property caused by or resulting from a Covered Cause of Loss that occurs during the "coverage term". The expenses will be paid only if they are reported to us in writing within 180 days of the date of direct physical "loss".

- (2) This Additional Coverage does not apply to costs to:

- (a) Extract "pollutants" from land or water; or

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is determined prior to "loss", for fire department service charges:

- (1) Assumed by contract or agreement; or
- (2) Required by local ordinance.

This Coverage is in addition to the Limits of Insurance shown in the Declarations.

**d. Fire Protection Equipment Recharge**

- (1) We will pay for the expenses you incur to recharge your automatic fire suppression system or portable fire extinguishers when the equipment is discharged:
  - (a) To combat a covered fire to which this insurance applies;
  - (b) As a result of another covered Cause of Loss other than fire; or
  - (c) As a result of an accidental discharge.
- (2) We will not pay your expenses to recharge fire protection equipment as a result of a discharge during testing or installation.
- (3) If it is less expensive to do so, we will pay your costs to replace your automatic fire suppression system or portable fire extinguishers rather than recharge that equipment.

The most we will pay under this Additional Coverage is \$25,000 in any one occurrence. This Coverage is in addition to the Limits of Insurance shown in the Declarations.

**e. Inventory or Appraisal**

- (1) We will pay the necessary expenses you incur to prepare claim information as required by this Coverage Part. Expenses must result from:
  - (a) Taking inventories;
  - (b) Making appraisals; and
  - (c) Preparing a statement of loss and other supporting exhibits.
- (2) We will not pay for any expenses:
  - (a) Incurred to prove that "loss" is covered;
  - (b) Incurred under **SECTION D. LOSS CONDITIONS, 2. Appraisal**;
  - (c) Incurred for examinations under oath;

(d) Billed by and payable to independent or public adjusters; or

(e) To prepare claims not covered by this Coverage Part.

The most we will pay under this Additional Coverage for any one occurrence is \$10,000. This Coverage is in addition to the Limits of Insurance shown in the Declarations.

**f. Key and Lock Expense**

- (1) If a key is lost, stolen, or damaged, we will pay for:
  - (a) The actual expense of the new keys; and
  - (b) The adjustment of locks to accept new keys; or
  - (c) If required, new locks, including the expense of their installation;but only for locks at buildings or structures covered by this Coverage Part.
- (2) This Coverage does not apply to keys that were given to former employees.

The most we will pay under this Additional Coverage is \$1,000 per occurrence. This Coverage is in addition to the Limits of Insurance shown in the Declarations.

**g. Ordinance or Law**

- (1) If a Covered Cause of Loss occurs to a covered building or structure, resulting in the enforcement of an ordinance or law that:
  - (a) Requires the demolition of undamaged parts of covered buildings or structures that are damaged or destroyed by a Covered Cause of Loss; or
  - (b) Regulates the construction or repair of buildings or structures, or establishes building, zoning, or land use requirements at the "premises"; and
  - (c) Is in force at the time that "loss" is sustained;we will pay:
  - (a) For loss in value of the undamaged portion of the building or structure caused by enforcement of an ordinance or law that requires demolition of undamaged parts of the same building or structure;

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**j. Rewards**

We will pay to provide a reward for information that leads to a conviction for arson, theft, vandalism, or burglary. The conviction must involve a covered "loss" caused by arson, theft, vandalism, or burglary. The most we will pay for "loss" under this Additional Coverage is \$10,000 in any one occurrence. This Coverage is in addition to the Limits of Insurance shown in the Declarations.

**5. Coverage Extensions**

Unless amended within the Extension, each Extension applies to property located in or on the building described in the Declarations or in the open (or in a vehicle) within 1,000 feet of the "premises".

The limits applicable to the Coverage Extensions are in addition to the Limits of Insurance shown in the Property Declarations. Limits of Insurance specified in these Extensions apply per location unless stated otherwise.

**SECTION E. ADDITIONAL CONDITIONS, 1. Coinsurance**, does not apply to these Coverage Extensions.

**a. Accounts Receivable**

**SECTION C. DEDUCTIBLE** does not apply to this Coverage Extension.

(1) When you sustain "loss" to your accounts receivable records caused by a Covered Cause of Loss, we will pay:

- (a) All amounts due from your customers that you are unable to collect;
- (b) Interest charges on any loan required to offset amounts you are unable to collect pending our payment of these amounts;
- (c) Collection expenses in excess of your normal collection expenses that are made necessary by the "loss"; and
- (d) Other reasonable expenses that you incur to re-establish your records of accounts receivable.

(2) Coverage does not apply to:

- (a) Records of accounts receivable in storage away from the "premises"; or
- (b) Contraband, or property in the course of illegal transportation or trade.

(3) We will extend coverage to include:

**(a) Removal**

If you give us written notice within 30 days of removal of your records of accounts receivable because of imminent danger of "loss" from a Covered Cause of Loss, we will pay for "loss" while they are:

- 1) At a safe place away from your "premises"; or
- 2) Being taken to and returned from that place.

This Removal coverage is included within the Limit of Insurance applicable to this Coverage Extension.

**(b) Away From Your Premises**

We will pay up to \$5,000 in any one occurrence, regardless of the number of locations, for "loss" caused by a Covered Cause of Loss to Accounts Receivable while they are away from your "premises".

This Away From Premises Limit is in addition to the Limit of Insurance applicable to this Coverage Extension.

(4) **SECTION A. COVERAGE, 3. Covered Causes of Loss, b. Exclusions** does not apply to this Coverage Extension, except as follows:

- (a) **Exclusion (1)(c) Governmental Action;**
- (b) **Exclusion (1)(d) Nuclear Hazard;**
- (c) **Exclusion (1)(f) War and Military Action.**

(5) In addition to Paragraph (4) of this Coverage Extension, we will not pay for "loss" resulting from any of the following:

**(a) Dishonest or criminal acts by:**

- 1) You, your partners, employees, directors, trustees or authorized representatives;
- 2) A manager or a member if you are a limited liability company;
- 3) Anyone else with an interest in the records of accounts receivable, or their employees or authorized representatives; or

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1000 feet of the site at which the "premises" are located.

## **(2) Extra Expense**

We will pay "Extra Expense" you incur during the "period of restoration":

- (a)** To avoid or minimize the "suspension" of business and to continue "operations":
  - 1)** At the "premises"; or
  - 2)** At replacement locations or at temporary locations, including:
    - a)** Relocation expenses; and
    - b)** Costs to equip and operate the replacement or temporary locations; or
- (b)** To minimize the "suspension" of business if you cannot continue "operations".

However:

- (a)** We will pay "Extra Expense" to repair or replace any property, or to research, replace, or restore the lost information on damaged "valuable papers and records" only to the extent it reduces the amount of "loss" that otherwise would have been payable under this Coverage Part; and
- (b)** If any property obtained for temporary use during the "period of restoration" remains after the resumption of normal "operations", the amount we will pay under this Coverage will be reduced by the salvage value of that property.

## **(3) Tenant Premises**

If you are a tenant and occupy only part of the site at which the "premises" are located, for the purpose of this Coverage Extension only, your "premises" is the portion of the building that you rent, lease or occupy, including:

- (a)** Any area within the building or on the site at which the "premises" are located if that area services or is used to gain access to the "premises"; and
- (b)** Your personal property in the open (or in a vehicle) within 1,000 feet.

## **(4) Civil Authority**

We will pay for the actual loss of "Business Income" you sustain and "Extra Expense" you incur caused by action of civil authority that prohibits access to the "premises" due to direct physical "loss" to property, other than at the "premises", caused by or resulting from any Covered Cause of Loss.

This coverage will apply for a period of up to 30 consecutive days from the date of that action.

## **(5) Alterations and New Buildings**

We will pay for the actual loss of "Business Income" you sustain and "Extra Expense" you incur due to direct physical "loss" at the "premises" caused by or resulting from any Covered Cause of Loss to:

- (a)** New buildings or structures, whether complete or under construction;
- (b)** Alterations or additions to existing buildings or structures; and
- (c)** Machinery, equipment, supplies or building materials located on or within 1,000 feet of the "premises" and:
  - 1)** Used in the construction, alterations or additions; or
  - 2)** Incidental to the occupancy of new buildings.

If such direct physical "loss" delays the start of "operations", the "period of restoration" for Business Income Coverage will begin on the date "operations" would have begun if the direct physical "loss" had not occurred.

## **(6) Newly Acquired Locations**

We will pay the actual loss of "Business Income" you sustain and "Extra Expense" you incur due to direct physical "loss" to Covered Property at any location you acquire caused by or resulting from a Covered Cause of Loss. This coverage for the Newly Acquired locations will end when any of the following first occurs:

- (a)** This policy expires;
- (b)** You report values to us;
- (c)** 90 days pass from the date you acquire or begin to construct the Covered Property.

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results in additional "loss" or expense in a subsequent "coverage term", all "loss" and expense is deemed to be sustained in the "coverage term" in which the interruption began.

This \$2,500 coverage for Interruption of Computer Operations does not increase the Limit of Insurance provided in this Coverage Extension.

The most we will pay for "loss" under this "Business Income" and "Extra Expense" Coverage Extension is \$25,000 in any one occurrence.

**c. Collapse**

**(1) With respect to buildings:**

- (a)** Collapse means an abrupt falling down or caving in of a building or any part of a building with the result that the building or part of the building cannot be occupied for its intended purpose.
- (b)** A building or any part of a building that is in imminent danger of collapse is not considered to be in a state of collapse.
- (c)** A building that is standing or any part of a building that is standing is not considered to be in state of collapse even if it:
  - 1)** Has separated from another part of a building; or
  - 2)** Shows evidence of cracking, bulging, sagging, bending, leaning, settling, shrinking or expanding.

**(2) We will pay for "loss" to Covered Property, caused by collapse of a building or any part of a building insured under this Coverage Part, if the collapse is caused by one or more of the following:**

- (a)** "Specified Causes of Loss" and breakage of building glass as provided under this Coverage Part.
- (b)** Decay that is hidden from view, unless the presence of such decay is known or should reasonably have been known to an insured prior to collapse;
- (c)** Insect or vermin damage that is hidden from view, unless the presence of such damage is known or should reasonably have been

known to an insured prior to collapse;

- (d)** Weight of people or personal property;
- (e)** Weight of rain that collects on a roof;
- (f)** Use of defective material or methods in construction, remodeling, or renovation if the collapse occurs during the course of the construction, remodeling, or renovation. However, if the collapse occurs after construction, remodeling, or renovation is complete and is caused in part by a cause of loss listed in **(2)(a)** through **(2)(e)** of this Coverage Extension, we will pay for "loss" even if the use of defective material or methods, in construction, remodeling or renovation, contributes to the collapse.

The criteria set forth in **(1)(a)** through **(1)(c)** of this Coverage Extension do not limit the coverage otherwise provided for the causes of loss listed in **(2)(a)**, **(2)(d)**, or **(2)(e)** of this paragraph.

**(3) If the following is Covered Property under this Coverage Part:**

- (a)** Outdoor radio or television antennas (including satellite dishes) and their lead-in wiring, masts or towers;
- (b)** Awnings, gutters and downspouts;
- (c)** Yard fixtures;
- (d)** Outdoor swimming pools;
- (e)** Fences;
- (f)** Piers, wharves and docks;
- (g)** Beach or diving platforms; including their appurtenances;
- (h)** Retaining walls; and
- (i)** Walks, roadways and other paved surfaces;

we will pay for "loss" caused by its collapse, if such "loss" is a direct result of the collapse of a building or structure insured under this Coverage Part. That building collapse must be caused by a cause of loss listed in **(2)(b)** through **(2)(f)** of this Coverage Extension.

**(4) If personal property abruptly falls down or caves in and such collapse is not the**

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(2) We will pay for "loss" by "fungi", wet or dry rot or bacteria. As used in this Coverage Extension, the term "loss" means:

- (a) Direct physical "loss" to Covered Property caused by "fungi", wet or dry rot or bacteria, including the cost of removal of the "fungi", wet or dry rot or bacteria;
- (b) The cost to tear out and replace any part of the building or other property as needed to gain access to the "fungi", wet or dry rot or bacteria; and
- (c) The cost of testing performed after removal, repair, replacement or restoration of the damaged property is completed, provided there is a reason to believe that "fungi", wet or dry rot or bacteria are present.

(3) The coverage described under g.(2) of this Coverage Extension is limited to \$15,000. Regardless of the number of claims, this limit is the most we will pay for the total of all "loss" arising out of all occurrences that take place in the "coverage term". With respect to a particular occurrence of "loss" which results in "fungi", wet or dry rot or bacteria, we will not pay more than a total of \$15,000 even if the "fungi", wet or dry rot or bacteria continues to be present or active, or recurs, in a subsequent "coverage term".

(4) The coverage provided under this Coverage Extension does not increase the applicable Limit of Insurance on any Covered Property. If a particular occurrence results in "loss" by "fungi", wet or dry rot or bacteria, and other "loss", we will not pay more, for the total of all "loss" than the applicable Limit of Insurance on the affected Covered Property.

If there is covered "loss" to Covered Property, not caused by "fungi", wet or dry rot or bacteria, loss payment will not be limited by the terms of this Coverage Extension, except to the extent that "fungi", wet or dry rot or bacteria causes an increase in the "loss". Any such increase in the "loss" will be subject to the terms of this Coverage Extension.

(5) The terms of this Coverage Extension do not increase or reduce the coverage provided under:

(a) **SECTION A. COVERAGE, 5. Coverage Extensions, c. Collapse;**

(b) **SECTION A. COVERAGE, 5. Coverage Extensions, s. Water, Other Liquids, Powder or Molten Material Damage**

(6) The following (6)(a) or (6)(b) apply only if Business Income, Rental Value, or Extra Expense Coverage applies to the "premises" and only if the "suspension" of "operations" satisfies all terms and conditions of the applicable Business Income, Rental Value, or Extra Expense Coverage.

(a) If the "loss" which resulted in "fungi", wet or dry rot or bacteria does not in itself necessitate a "suspension" of "operations", but such "suspension" is necessary due to "loss" to property caused by "fungi", wet or dry rot or bacteria, then our payment under Business Income and/or Extra Expense is limited to the amount of "loss" and/or expense sustained in a period of not more than 30 days. The days need not be consecutive.

(b) If a covered "suspension" of "operations" was caused by "loss" other than "fungi", wet or dry rot or bacteria but remediation of "fungi", wet or dry rot or bacteria prolongs the "period of restoration", we will pay for "loss" and/or expense sustained during the delay (regardless of when such a delay occurs during the "period of restoration"), but such coverage is limited to 30 days. The days need not be consecutive.

#### **h. Glass**

(1) If a Covered Cause of Loss occurs to building glass that is Covered Property, we will also pay necessary expenses you incur to:

- (a) Put up temporary plates or board up openings if repair or replacement of damaged glass is delayed;
- (b) Repair or replace encasing frames;
- (c) Remove or replace obstructions (except expenses to remove or replace window displays); and
- (d) Repair or replace alarm tapes.

We will charge you additional premium for values reported from the date construction begins on that part of the building that would qualify as Covered Property, or you acquire the new property.

**j. Non-Owned Building Damage**

If you are a tenant, you may extend the insurance provided by this Coverage Part for Business Personal Property to "loss" that occurs to the building at a "premises" you occupy but do not own. Such "loss" must be caused by theft or attempted theft.

This Coverage Extension applies only if your lease makes you legally responsible for that part of the building sustaining "loss".

This Coverage Extension does not apply to:

- (1) Glass, including lettering and ornamentation, and also necessary:
  - (a) Repair or replacement of encasing frames or alarm tapes; and
  - (b) Expenses incurred to board up openings or remove or replace obstruction.
- (2) Building materials and equipment removed from the "premises".

The most we will pay for "loss" under this Coverage Extension is \$25,000 in any one occurrence.

**k. Outdoor Property**

You may extend the insurance provided by this Coverage Part to apply to "loss" to your:

- (1) Radio antennas, television antennas or satellite dishes (including their lead-in wiring, masts and towers);
- (2) Trees, shrubs or plants (other than "stock" of trees, shrubs, or plants); and
- (3) If you are a tenant, to your awnings that are attached to a building you occupy;

including debris removal expense, but only if caused by or resulting from any of the following causes of loss if they are included as Covered Causes of Loss under this Coverage Part:

- (a) Fire;
- (b) Lightning;
- (c) Explosion;
- (d) Riot or Civil Commotion;
- (e) Aircraft; or

**(f) Falling objects.**

The most we will pay for "loss" under this Coverage Extension is \$5,000 in any one occurrence, but not more than \$1,000 for any one tree, shrub or plant.

**l. Personal Effects**

You may extend the insurance that applies to your Business Personal Property to apply to "loss" to:

Personal effects owned by:

- (1) You, your officers, or your partners, or if you are a limited liability company, your members or your managers; or
- (2) Your employees (including temporary and leased employees), including tools owned by your employees that are used in your business. However, employee tools are not covered for theft.

This Coverage Extension does not apply to "money" or "securities".

If theft is included as a Covered Cause of Loss under this Coverage Part, then this Coverage Extension has a \$500 per occurrence limitation for "loss" by theft.

The most we will pay for "loss" under this Coverage Extension is \$10,000 in any one occurrence.

**m. Property Off Premises**

- (1) You may extend the insurance provided by this Coverage Part to apply to "loss" to your Covered Property, including personal property of others as described in **SECTION A. COVERAGE, 1. Covered Property, d. Business Personal Property**, while it is away from the "premises", if it is:

- (a) Temporarily at a location you do not own, lease, or operate; or
- (b) In storage at a location you lease, provided the lease was executed for the first time after the beginning of the current "coverage term".

- (2) This Coverage Extension does not apply to Covered Property at exhibitions or fairs or in transit.

The most we will pay for "loss" under this Coverage Extension is \$10,000 in any one occurrence.

The Limit of Insurance provided by this Coverage Extension does not apply per location.

cluding destruction or corruption of "electronic data".

The most we will pay for "loss" under this Coverage Extension is \$25,000 in any one occurrence.

**r. Valuable Papers and Records**

**SECTION C. DEDUCTIBLE** does not apply to this Coverage Extension.

(1) Subject to Paragraph (3) of this Coverage Extension, we will pay necessary costs you incur to research, replace or restore lost or damaged information on "valuable papers and records" that are your property or the property of others in your care, custody or control; resulting from "loss" caused by a Covered Cause of Loss.

(2) Coverage does not apply to:

- (a) Property that cannot be replaced with other property of like kind and quality;
- (b) Property held as samples or for delivery after sale;
- (c) Property in storage away from the "premises", except as provided in (4)(b) of this Coverage Extension;
- (d) Contraband, or property in the course of illegal transportation or trade;
- (e) "Valuable papers and records" in the form of "electronic data", including the materials on which the "electronic data" is recorded.

(3) The most we will pay for "loss" is the least of the following amounts:

- (a) The cost of reasonably restoring the damaged property to its condition immediately before the "loss";
- (b) The cost of replacing the damaged property with substantially identical property; or
- (c) The actual cash value of the damaged property at the time of "loss".

However, we will not pay for "loss" unless or until the damaged property is actually replaced or restored; and then only if such replacement or restoration occurs within 36 months from the date of "loss".

(4) We will extend coverage to include:

**(a) Removal**

If you give us written notice within 30 days of removal of your "valuable papers and records" because of imminent danger of "loss" from a Covered Cause of Loss, we will pay for "loss" while they are:

- 1) At a safe place away from your "premises"; or
- 2) Being taken to and returned from that place.

This Removal coverage is included within the Limits of Insurance applicable to this Coverage Extension.

**(b) Away From Your Premises**

We will pay up to \$5,000 in any one occurrence, regardless of the number of locations, for "loss" caused by a Covered Cause of Loss to "valuable papers and records" while they are away from your "premises".

This Away From Premises Limit is in addition to the Limit of Insurance applicable to this Coverage Extension.

(5) **SECTION A. COVERAGE, 3. Covered Causes of Loss, b. Exclusions** does not apply to this Coverage Extension except as follows:

- (a) **Exclusion (1)(c) Governmental Action;**
- (b) **Exclusion (1)(d) Nuclear Hazard; and**
- (c) **Exclusion (1)(f) War and Military Action.**

(6) In addition to Paragraph (5) of this Coverage Extension, we will not pay for "loss" resulting from any of the following:

(a) Dishonest or criminal acts by:

- 1) You, your partners, employees, directors, trustees or authorized representatives;
- 2) A manager or a member if you are a limited liability company;
- 3) Anyone else with an interest in the records of accounts receivable, or their employees or authorized representatives; or

Total amount of "loss" payable: \$59,850 + 80,000 = \$139,850.

### Example No. 2:

(This example also assumes there is no coinsurance penalty).

The Deductible and Limits of Insurance are the same as those in Example No. 1:

"Loss" to Bldg. 1: \$70,000  
(Exceeds Limit of Insurance plus Deductible)  
"Loss" to Bldg. 2: \$90,000  
(Exceeds Limit of Insurance plus Deductible)  
"Loss" Payable - Bldg. 1: \$60,000  
(Limit of Insurance)  
"Loss" Payable - Bldg. 2: \$80,000  
(Limit of Insurance)

Total amount of "loss" payable: \$140,000.

## 2. Glass Deductible

When "loss" to Covered Property only involves building glass, the Deductible for that "loss" will be the lesser of:

- a. \$500; or
- b. The Deductible shown in the Declarations for that Covered Property.

## SECTION D. LOSS CONDITIONS

The following conditions apply in addition to the **COMMON POLICY CONDITIONS** and the **COMMERCIAL PROPERTY CONDITIONS**.

### 1. Abandonment

There can be no abandonment of any property to us.

### 2. Appraisal

If we and you disagree on the value of the property, the amount of Net Income and operating expense, or the amount of "loss", either may make written demand for an appraisal of the "loss". In this event, each party will select a competent and impartial appraiser. The two appraisers will select an umpire. If they cannot agree, either may request that selection be made by a judge of a court having jurisdiction. The appraisers will state separately the value of the property, the amount of Net Income and operating expense, and amount of "loss". If they fail to agree, they will submit their differences to the umpire. A decision agreed to by any two will be binding. Each party will:

- a. Pay its chosen appraiser; and

- b. Bear the other expenses of the appraisal and umpire equally.

If there is an appraisal, we still retain our right to deny the claim.

## 3. Duties In The Event of Loss or Damage

- a. In the event of "loss" to Covered Property, you must see that the following are done in order for coverage to apply:
  - (1) Notify the police if a law may have been broken.
  - (2) Give us prompt notice of the "loss". Include a description of the property involved.
  - (3) As soon as possible, give us a description of how, when and where the "loss" occurred.
  - (4) Take all reasonable steps to protect the Covered Property from further damage. If feasible, set the damaged property aside and in the best possible order for examination. Keep a record of your expenses necessary to protect the Covered Property for consideration in the settlement of the claim. This will not increase your limit of insurance. However, in no event will we pay for any subsequent "loss" resulting from a cause of loss that is not a Covered Cause of Loss.
  - (5) At our request, give us complete inventories of the damaged and undamaged property. Include quantities, costs, values and amount of "loss" claimed.
  - (6) As often as may be reasonably required, permit us to inspect the property proving the "loss" and examine your books and records.

Also permit us to take samples of damaged and undamaged property for inspection, testing and analysis and permit us to make copies from your books and records.
  - (7) Submit a signed sworn proof of loss containing the information we request to investigate the claim. You must do this within 60 days after our request. We will supply you with the necessary forms.
  - (8) Cooperate with us in the investigation or settlement of the claim.

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- (b) If the building is repaired or replaced at the same "premises", or if you elect to rebuild at another premises, the most we will pay for the increased cost of construction is the increased cost of construction at the same "premises".
  - (c) If the ordinance or law requires relocation to another premises, the most we will pay for the increased cost of construction is the increased cost of construction at the new premises.
- j. **Loss Determination - Business Income and Extra Expense**

With respect to **SECTION A. COVERAGE, 5. Coverage Extensions, b. Business Income and Extra Expense,**

- (1) The amount of "Business Income" and "Rental Value" "loss" will be determined based on:
  - (a) The Net Income of the business before the direct physical "loss" occurred;
  - (b) The likely Net Income of the business if no physical "loss" had occurred, but not including any Net Income that would likely have been earned as a result of an increase in the volume of business due to favorable business conditions caused by the impact of the Covered Cause of Loss on customers or on other businesses;
  - (c) The operating expenses, including payroll expenses, necessary to resume "operations" with the same quality of service that existed just before the direct physical "loss"; and
  - (d) Other relevant sources of information, including:
    - 1) Your financial records and accounting procedures;
    - 2) Bills, invoices and other vouchers; and
    - 3) Deeds, liens or contracts.
- (2) The amount of "Extra Expense" will be determined based on:
  - (a) All expenses that exceed the normal operating expenses that would have been incurred by "operations" during the "period of restoration" if no direct physical "loss"

had occurred. We will deduct from the total of such expenses:

- 1) The salvage value that remains of any property bought for temporary use during the "period of restoration", once "operations" are resumed; and
- 2) Any "Extra Expense" that is paid for by other insurance, except for insurance that is written subject to the same plan, terms, conditions and provisions as this insurance; and

- (b) Necessary expenses that reduce the "Business Income" and "Rental Value" "loss" that otherwise would have been incurred.

**(3) Resumption of Operations**

We will reduce the amount of your:

- (a) "Business Income" and "Rental Value" "loss", other than "Extra Expense", to the extent you can resume your "operations", in whole or in part, by using damaged or undamaged property (including merchandise or "stock") at the "premises" or elsewhere.
- (b) "Extra Expense" "loss" to the extent you can return "operations" to normal and discontinue such "Extra Expense".
- (4) If you do not resume "operations", or do not resume "operations" as quickly as possible, we will pay based on the length of time it would have taken to resume "operations" as quickly as possible.

**5. Recovered Property**

If either you or we recover any property after loss settlement, that party must give the other prompt notice. At your option, the property will be returned to you. You must then return to us the amount we paid to you for the property. We will pay recovery expenses and the expenses to repair the recovered property, subject to the Limit of Insurance.

**6. Vacancy**

**a. Description of Terms**

- (1) As used in this Vacancy Condition, the term building and the term vacant have the meanings set forth in (1)(a) and (1)(b) below:

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## SECTION E. ADDITIONAL CONDITIONS

The following conditions apply in addition to the **COMMON POLICY CONDITIONS** and the **COMMERCIAL PROPERTY CONDITIONS**.

### 1. Coinsurance

If a Coinsurance percentage is shown in the Declarations, the following condition applies.

- a. We will not pay the full amount of any "loss" if the value of Covered Property at the time of "loss" times the Coinsurance percentage shown for it in the Declarations is greater than the Limit of Insurance for the property.

Instead, we will determine the most we will pay using the following steps:

- (1) Multiply the value of Covered Property at the time of "loss" by the Coinsurance percentage;
- (2) Divide the Limit of Insurance of the property by the figure determined in step (1);
- (3) Multiply to the total amount of "loss", before the application of any deductible, by the figure determined in step (2); and
- (4) Subtract the deductible from the figure determined in step (3).

We will pay the amount determined in step (4) or the Limit of Insurance, whichever is less. For the remainder, you will either have to rely on other insurance or absorb the "loss" yourself.

#### Example No. 1 (Underinsurance):

The value of the property is: \$250,000  
The coinsurance percentage is: 80%  
The Limit of Insurance is: \$100,000  
The Deductible is: \$250  
The amount of "loss" is: \$40,000

Step (1):

$\$250,000 \times 80\% = \$200,000$  (the minimum amount of insurance to meet your Coinsurance requirements)

Step (2):

$\$100,000 \div \$200,000 = .50$

Step (3):

$\$40,000 \times .50 = \$20,000$

Step (4):

$\$20,000 - \$250 = \$19,750$ .

We will pay no more than \$19,750. The remaining \$20,250 is not covered.

#### Example No. 2 (Adequate Insurance):

The value of the property is: \$250,000  
The coinsurance percentage is: 80%  
The Limit of Insurance is: \$200,000  
The Deductible is: \$250  
The amount of "loss" is: \$40,000

Step (1):

$\$250,000 \times 80\% = \$200,000$  (the minimum amount of insurance to meet your Coinsurance requirements)

Step (2):

$\$200,000 \div \$200,000 = 1.00$

Step (3):

$\$40,000 \times 1.00 = \$40,000$

Step (4):

$\$40,000 - \$250 = \$39,750$ .

We will pay no more than \$39,750 "loss" in excess of the Deductible. No penalty applies.

- b. If one Limit of Insurance applies to two or more separate items, this condition will apply to the total of all property to which the limit applies.

#### Example No. 3:

The values of the property are:

Bldg. at Location No. 1: \$75,000  
Bldg. at Location No. 2: \$100,000  
Personal Property at Location No. 2: \$75,000  
250,000

The coinsurance percentage is: 90%  
The Limit of Insurance for Buildings and Personal

Property at Location Nos. 1 and 2 is: \$180,000  
The Deductible is: \$1,000  
The amount of "loss" is:  
Bldg. at Location No. 2: \$30,000  
Personal Property at Location No. 2: \$20,000  
\$50,000

Step (1):

$\$250,000 \times 90\% = \$225,000$   
(the minimum amount of insurance to meet your Coinsurance requirements and to avoid the penalty shown below)

Step (2):

$\$180,000 \div \$225,000 = .80$

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as a decimal (example: 8% is .08), multiplied by

- (3) The number of days since the beginning of the current "coverage term" or the effective date of the most recent policy change amending the Limit of Insurance, divided by 365.

Example:

If: The applicable Limit of Insurance is: \$100,000

The Annual percentage increase is: 8%

The number of days since the beginning of the policy year (or last policy change) is: 146

The amount of increase is  
 $\$100,000 \times .08 \times 146 \div 365 = \$3,200$

### 3. Replacement Cost

- a. Replacement Cost (without deduction for depreciation) replaces "Actual Cash Value" in **SECTION D. LOSS CONDITIONS, 7. Valuation of this BUILDING AND PERSONAL PROPERTY COVERAGE FORM.**
- b. This Optional Coverage does not apply to:
- (1) Personal Property of others, except leased personal property as described in **SECTION A. COVERAGE, 1. Covered Property, d.(7).** The valuation of such leased personal property will be based on the amount for which you are liable under the lease, but not to exceed the replacement cost of the leased item.
  - (2) Personal effects;
  - (3) Contents of a residence;
  - (4) Manuscripts;
  - (5) Works of art, antiques or rare articles, including etchings, pictures, statuary, marbles, bronzes, porcelains and bric-a-brac;
  - (6) "Stock" unless the Replacement Cost including "Stock" option is shown in the Declarations; or
  - (7) Property, that at the time of "loss":
    - (a) Is outdated, or obsolete and is stored or not being used; or
    - (b) Has no practical value to you.
- c. You may make a claim for "loss" covered by this insurance on an "Actual Cash Value"

basis instead of on a replacement cost basis. In the event you elect to have "loss" settled on an "Actual Cash Value" basis, you may still make a claim for the additional coverage this Optional Coverage provides if you notify us of your intent to do so within 180 days after the "loss".

- d. We will not pay on a replacement cost basis for any "loss":
- (1) Until the lost or damaged property is actually repaired or replaced with other property of generally the same construction and used for the same purpose as the lost or damaged property; and
  - (2) Unless the repairs or replacement have been completed or at least underway within 2 years following the date of "loss".
- e. We will not pay more for "loss" on a replacement cost basis than the least of:
- (1) The Limit of Insurance applicable to the lost or damaged property;
  - (2) The cost to replace, on the same "premises", the lost or damaged property with other property:
    - (a) Of comparable material and quality; and
    - (b) Used for the same purpose; or
  - (3) The amount you actually spend that is necessary to repair or replace the lost or damaged property.
- f. The cost of repair or replacement does not include the increased cost attributable to enforcement of any ordinance or law regulating the construction, use, or repair of any building or structure except as provided in **SECTION A. COVERAGE, 4. Additional Coverages, g. Ordinance or Law.**

### SECTION G. DEFINITIONS

1. "Actual Cash Value" means replacement cost less a deduction that reflects depreciation, age, condition and obsolescence.
2. "Business Income" means the:
  - a. Net Income (net profit or loss before income taxes) that would have been earned or incurred; and
  - b. Continuing normal operating expenses incurred, including payroll.
3. "Computer programs" means a set of related electronic instructions which direct the operations and functions of a computer or device

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14. **"Premises"** means the Location of Premises described in the Declarations.

15. **"Rental Value"** means "Business Income" that consists of :

- a. Net Income (Net Profit or Loss before income taxes) that would have been earned or incurred as rental income from tenant occupancy of the "premises" described in the Declarations as furnished and equipped by you, including fair rental value of any portion of the "premises" which is occupied by you; and
- b. Continuing normal operating expenses incurred in connection with that "premises", including:
  - (1) Payroll; and
  - (2) The amount of charges, which are the legal obligation of the tenant(s) but would otherwise be your obligations.

16. **"Securities"** means negotiable and non-negotiable instruments or contracts representing either "money" or other property and includes:

- a. Tokens, tickets, revenue and other stamps whether or not in current use; and
- b. Evidences of debt issued in connection with credit or charge cards, which are not of your own issue:

but does not include "money". Lottery tickets held for sale are not "securities" or evidences of debt.

17. **"Sinkhole collapse"** means the sudden settlement or collapse of earth supporting the Covered Property into subterranean voids created by the action of water on a limestone or similar rock formation. This does not include:

- a. The cost of filling sinkholes;
- b. Sinking or collapse of land into man-made subterranean cavities; or

c. The value of the land.

18. **"Specified Causes of Loss"** means fire; lightning; explosion; windstorm or hail; smoke; aircraft or vehicles; riot or civil commotion; vandalism; leakage from fire extinguishing equipment; "sinkhole collapse"; volcanic action; falling objects; weight of snow, ice or sleet; water damage.

a. Falling objects does not include "loss" to:

- (1) Personal property in the open; or
- (2) The interior of a building or structure, or property inside a building or structure, unless the roof or an outside wall of the building or structure is first damaged by a falling object.

b. Water damage means accidental discharge or leakage of water or steam as the direct result of the breaking apart or cracking of any part of a system or appliance (other than a sump system including its related equipment and parts) containing water or steam.

19. **"Stock"** means merchandise held in storage or for sale, raw materials and in-process or finished goods, including supplies used in their packing or shipping.

20. **"Suspension"** means:

- a. The slowdown or cessation of your business activities; and
- b. That a part or all of the "premises" is rendered untenable.

21. **"Valuable Papers and Records"** means inscribed, printed or written documents, manuscripts or records, including abstracts, books, card index systems, deeds, drawings, films, maps, mortgages, or proprietary information.

But "valuable papers and records" does not mean "money" or "securities" or "electronic data", including the materials on which the "electronic data" is recorded.

# COMMERCIAL PROPERTY CONDITIONS

This Coverage Part is subject to the following conditions, the Common Policy Conditions and applicable Loss Conditions and Additional Conditions in Commercial Property Coverage Forms.

## A. Concealment, Misrepresentation or Fraud

This Coverage Part is void in any case of fraud by you as it relates to this Coverage Part at any time. It is also void if you or any other insured, at any time, intentionally conceal or misrepresent a material fact concerning:

1. This Coverage Part;
2. The Covered Property;
3. Your interest in the Covered Property; or
4. A claim under this Coverage Part.

## B. Control of Property

Any act or neglect of any person other than you beyond your direction or control will not affect this insurance.

The breach of any condition of this Coverage Part at any one or more locations will not affect coverage at any location where, at the time of "loss", the breach of condition does not exist.

## C. Insurance Under Two or More Coverages

If two or more of this policy's coverages apply to the same "loss", we will not pay more than the actual amount of the "loss".

## D. Legal Action Against Us

No one may bring a legal action against us under this Coverage Part unless:

1. There has been full compliance with all of the terms of this Coverage Part; and
2. The action is brought within 2 years after the date on which the direct physical "loss" occurred.

## E. Liberalization

If, within 60 days prior to the beginning of this Coverage Part or during the policy period, we make any changes to any forms or endorsements of this Coverage Part for which there is currently no separate premium charge, and that change provides more coverage than this Coverage Part, the change will be considered as included until the end of the current policy period. We will make no additional premium charge for this additional coverage during the interim.

## F. No Benefit to Bailee

No person or organization, other than you, having custody of Covered Property will benefit from this insurance.

## G. Other Insurance

1. You may have other insurance subject to the same plan, terms, conditions and provisions as the insurance under this Coverage Part. If you do, we will pay our share of the covered "loss". Our share is the proportion that the applicable Limit of Insurance under this Coverage Part bears to the Limits of Insurance of all insurance covering on the same basis.
2. If there is other insurance covering the same "loss", other than that described in 1. above, we will pay only for the amount of covered "loss" in excess of the amount due from that other insurance, whether you can collect on it or not. **However, we will not reimburse any deductible or difference between Actual Cash Value and Replacement Cost valuations.** We will not pay more than the applicable Limit of Insurance.

## H. Policy Period, Coverage Territory

Under this Coverage Part:

1. We cover "loss" commencing:
  - a. During the policy period shown in the Declarations; and
  - b. Within the coverage territory.
2. The coverage territory:
  - a. The United States of America (including its territories and possessions);
  - b. Puerto Rico; and
  - c. Canada.

## I. Transfer of Rights of Recovery Against Others to Us

If any person or organization to or for whom we make payment under this Coverage Part has rights to recover damages from another, those rights are transferred to us to the extent of our payment. That person or organization must do everything necessary to secure our rights and must do nothing after "loss" to im-

Insured: Park Brothers  
Insurance Company: Cincinnati

Policy Number: 1 PFC 258538  
Claim Number: 2904508

**POST-LOSS ASSIGNMENT OF INSURANCE CLAIM**

This Assignment is made as of 1/16, 2019 by and between Insured and Loss Recovery Specialists LLC (Public Adjuster).

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Insured hereby assigns to Public Adjuster, without warranty or recourse, all of his, her, its, or their right, title and interest in and to the above-referenced insurance Claim. It is expressly understood and agreed that this Assignment is made solely for purposes of allowing Public Adjuster to pursue legal recourse against the Insurance Company related to the Claim, and any recovery obtained by Public Adjuster in connection therewith remains subject to the post-appraisal and post-suit fee provisions of the parties' Public Adjuster Contract, the terms of which are incorporated herein by reference.

**ASSIGNOR:**

Insured

[Signature]  
Name: Faiz Solomon  
Title: Owner

**ASSIGNEE'S ACCEPTANCE OF ASSIGNMENT:**

Loss Recovery Specialists, LLC

[Signature]  
By: Benjamin W. Reichel  
Its: Manager

**Exhibit B**

CERTIFIED MAIL



7017 1450 0002 1332 6635

ess  
ertson Parkway  
resses 37243

U.S. POSTAGE & METS ROWES  
ZIP 37243 \$ 008.46°  
02 4W  
0000346000 JAN 02 2019



FIRST CLASS

Terran K

RECEIVED

JAN 07 2019

7017 1450 0002 1332 6635 12/18/2018  
CINCINNATI INSURANCE COMPANY, THE  
P O BOX 145496  
CINCINNATI, OH 45250

**State of Tennessee**  
**County of Hamilton**

I, Larry L. Henry, Clerk of the Circuit Court, in and for the State and County aforesaid, hereby certify that the within and foregoing is a true and correct copy of the original writ of summons issued in this case.

**Larry L. Henry, Circuit Court Clerk**

By: \_\_\_\_\_, D.C.

\*\*\*\*\*  
\*\*\*\*\*

**OFFICERS RETURN**

I certify that I served this summons together with the Complaint or Petition as follows:

☐ On \_\_\_\_\_, 20\_\_\_\_, I delivered a copy of the summons and complaint (or petition) to the defendant, \_\_\_\_\_

☐ Failed to serve this summons within 90 days after its issuance because:

\_\_\_\_\_  
\_\_\_\_\_

**Hamilton County Sheriff**

\_\_\_\_\_  
Deputy Sheriff

\*\*\*\*\*  
\*\*\*\*\*

**CLERK'S RETURN**

I hereby acknowledge and accept service of the within summons and receive copy of same this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Defendant

**Larry L. Henry, Circuit Court Clerk**

By: \_\_\_\_\_, D.C.